

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>CR. NO. 2:07-CR-22-WHA</b>
	)	
<b>MICHAEL GIBSON</b>	)	

**MOTION FOR LEAVE TO AMEND INDICTMENT**

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and moves this Court for Leave to Amend the Indictment in the above-styled cause. In support thereof, the United States submits the following:

1. On February 22, 2007, a grand jury sitting for this district returned a one count indictment against the Defendant. In drafting the indictment, the United States inadvertently committed a typographical error. Specifically, the offense date of March 14, 2005 as listed in the Indictment is incorrect. The correct offense date is February 14, 2007.

2. A substantive amendment to an indictment after it has been returned by a grand jury is reversible error. See generally, Stirone v. U.S., 361 U.S. 212, 215-18 (1960) (amendment to indictment violates the 5<sup>th</sup> Amendment Grand Jury Clause). However, where the amendment is merely to correct a clerical error, the amendment is permissible. U.S. v. Diaz, 190 F.3d 1247, 1252-53 (11<sup>th</sup> Cir. 1999) (no impermissible amendment of indictment when merely to correct nonprejudicial typographical error). The amendment sought herein is not substantive or prejudicial, its sole purpose is to correct a clerical error, and is thus permissible.

3. Defendant has been provided discovery and is aware that the correct offense date is February 14, 2007. Accordingly, the Defendant will not be prejudiced by this amendment.

For the above stated reasons, the United States respectfully requests leave to amend the indictment to correctly identify the offense date within the body of the indictment to read “February 14, 2007.”

Respectfully submitted this the 20th day of July, 2007.

LEURA G. CANARY  
UNITED STATES ATTORNEY

/s/Christa D. Deegan  
CHRISTA D. DEEGAN  
Assistant United States Attorney  
131 Clayton Street  
Montgomery, AL 36104-3429  
Phone: (334)223-7280 Fax: (334)223-7135  
E-mail: [christa.d.deegan@usdoj.gov](mailto:christa.d.deegan@usdoj.gov)

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:  
  
Kevin Butler, Esquire.

/s/Christa D. Deegan  
CHRISTA D. DEEGAN  
Assistant United States Attorney  
131 Clayton Street  
Montgomery, AL 36104-3429  
Phone: (334)223-7280 Fax: (334)223-7135  
E-mail: [christa.d.deegan@usdoj.gov](mailto:christa.d.deegan@usdoj.gov)